

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rita Bobe-Saleh	Team: Team # 2	CCRB Case #: 201305341	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 06/16/2013 9:00 PM	Location of Incident: § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED]	Precinct: 75	18 Mo. SOL 12/16/2014	EO SOL 12/16/2014	
Date/Time CV Reported Mon, 06/17/2013 12:19 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/17/2013 12:19 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. SGT Sean Downes	03978	918975	PBBN
3. SGT Erik Depasquale	02370	936471	PBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Noel Damico	12566	951650	075 PCT
2. POM Matthew Demaio	23579	952663	075 PCT
3. POM Jason Bryant	23744	950118	PBBN
4. POF Shannon Pearl	24161	907028	113 PCT
5. POF Colleen Donohue	10930	932423	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Erik Depasquale	Abuse: Sgt. Erik Depasquale entered § 87(2)(b) [REDACTED] in Brooklyn.	[REDACTED]
B.SGT Sean Downes	Force: Sgt. Sean Downes used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
C. Officers	Force: Officers used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
D. Officers	Discourtesy: Officers spoke discourteously to individuals.	

Case Summary

On June 16, 2013, residents of § 87(2)(b) in Brooklyn had a Father's Day barbeque that took place the entire day in the courtyard involving many of the residents, with an estimated turnout of over 100 people. At approximately 9:00 p.m., officers, including some assigned to Patrol Borough Brooklyn North, responded to a dispute at the location, which resulted in a large melee with different incidents between officers and civilians throughout various areas of the building complex (encl. 3G-N). TARU footage was obtained which revealed nothing of these incidents (encl. 3NN). This complaint solely addresses three separate incidents within the melee.

Sgt. Erik Depasquale entered § 87(2)(b)'s residence without consent to affect the arrest of § 87(2)(b) who had allegedly punched a female civilian prior to the officers' arrival to the scene (**Allegation A**). In the 2nd incident, officers pursued § 87(2)(b)'s friends up the stairwell right next to § 87(2)(b)'s apartment. § 87(2)(b) interacted with Sgt. Sean Downes, resulting in Sgt. Downes punching § 87(2)(b) in the face (**Allegation B**). § 87(2)(b) alleged that officers then stomped on him a few times before he was handcuffed (**Allegation C**).

In the 3rd incident, § 87(2)(b) who is solely a witness, indicated that as officers left the complex, she observed unidentified officers that she could not describe state to unidentified individuals in a crowd in the courtyard, "Shut the fuck up" (**Allegation D**).

This case was initially assigned to Inv. Erinn White. Upon her departure from the agency in October 2013, the case was held for reassignment. It was reassigned to the undersigned on October 28, 2014, one year after Inv. White's resignation.

Mediation and Criminal Histories

This case was not eligible for mediation. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- Sgt. Erik Depasquale has been a member of the service for 9 years, and has two prior cases where various allegations were unsubstantiated § 87(2)(g)
- Sgt. Sean Downes has been a member of the service for 17 years, and has various unsubstantiated allegations, four allegations substantiated under case #200600024 that resulted in him being found guilty during a DCT trial for a frisk resulting in the forfeiture of five vacation days. In case #201212286, a force allegation was also unsubstantiated because there were conflicting statements, and Sgt. Downes similarly explained in that case that the civilian threatened him with force by almost elbowing him, which resulted in Sgt. Downes using force against the civilian to end the threat (encl. 3B-D).
- This is § 87(2)(b) and § 87(2)(b)'s first CCRB complaint (encl. 3E-F).

Civilian Statements
Complainants/Victims

§ 87(2)(b) (Encl. 3O-Y)

- § 87(2)(b) is a § 87(2)(b) woman who is disabled and cannot walk without the assistance of a walker.
- § 87(2)(b) refused to let the officers into her apartment to arrest § 87(2)(b) and informed them that they needed a warrant.
- Sgt. Depasquale pushed her walker, which caused § 87(2)(b) to lose her balance and fall on the floor. Officers entered her residence as she was on the floor; § 87(2)(b) opened his bedroom door, voluntarily exited and was handcuffed.
- § 87(2)(b) witnessed two individuals, identified by the CCRB as § 87(2)(b) and § 87(2)(b) go up the stairwell next to her door with officers following them. § 87(2)(b) attempted to follow § 87(2)(b) and § 87(2)(b) when Sgt. Downes spun him around, punched him once in the face and sideswiped him to the floor. § 87(2)(b) was subsequently arrested.
- § 87(2)(b) was seen by EMT's inside her residence for pain to the head and neck as well as rug burns to her elbows. However, she refused to go to the hospital.

§ 87(2)(b) (Encl. 3Z-4M)

- § 87(2)(b) is § 87(2)(b). He consumed two beers and Petron throughout the day's festivities.
- § 87(2)(b) corroborated § 87(2)(b)'s testimony that he attempted to follow § 87(2)(b) and § 87(2)(b) up the stairs.
- § 87(2)(b) found himself surrounded by approximately 10 officers including Sgt. Downes, who struck him with a flashlight in the left eye, pushed him against the wall resulting in a scrape to his face and then took him down to the floor, causing a cut to his mouth. He also sustained a sprain to his left ankle resulting in him wearing an orthopedic boot.
- Unknown officer(s) stomped on § 87(2)(b) on an unknown location of his body 2 to 3 times resulting in unknown injuries. .
- Photos were provided by § 87(2)(b) that supported the above injuries as did his arrest photo (encl. 4E-J; 4M). However, during field work, a few weeks later, he was on crutches and his left leg/foot was in a cast (encl. 4K), which is not documented in his medical records (See Medical Records folder).

Witnesses

§ 87(2)(b) (Encl. 4N-S)

- She did not witness how the entry was made into her twin sister's residence, § 87(2)(b)
- An officer told § 87(2)(b) "Where the fuck are you going?" An officer threw an elbow into § 87(2)(b)'s face, who appeared slightly tipsy. § 87(2)(b) did not confront the officers. § 87(2)(b) was taken to the ground and handcuffed.
- As the events in that area finished and officers left, unidentified officers whom she could not describe told unidentified individuals in the crowd, "Shut the fuck up."

§ 87(2)(b) (Encl. 4Y-Z)

- His statement was obtained over the phone over 17 months after the incident.

- He witnessed § 87(2)(b)'s arrest and the entry into his aunt, § 87(2)(b)'s residence.
- § 87(2)(b) was asked a few times for his identification, and he initially asked why.
- § 87(2)(b) was pushed into an area near the trash compactor and a group of officers surrounded § 87(2)(b) who he could no longer see and appeared to be striking him.
- Once § 87(2)(b) opened the door, and as she spoke to the officers at the doorway, § 87(2)(b) squeezed past her into the residence.
- § 87(2)(b) refused to let the officers in to her residence and told them to back away and that she was going to close the door. § 87(2)(b) attempted to close the door and § 87(2)(b) tried to help her. However, the officers pushed back and Sgt. Depasquale wedged his body in between. As a result of the struggle to gain entry, § 87(2)(b) lost her balance off of her walker and fell back on the floor.

Additional Witnesses

- § 87(2)(b) was interviewed in the field and he corroborated § 87(2)(b)'s testimony pertaining to the officers' interaction with § 87(2)(b) including how she lost her balance. § 87(2)(b)'s confirmed that officers used force against § 87(2)(b) but claimed that once he was handcuffed, he was punched and kicked by numerous officers, which no other civilian corroborated including § 87(2)(b) (encl. 4T-X).
- Contact was established with the two of the individuals that called 911, § 87(2)(b) and § 87(2)(b) (encl.5A-B). They did not witness § 87(2)(b) and § 87(2)(b)'s interactions with the officers.
- Attempts were made to reach § 87(2)(b) but she has failed to contact the CCRB. Limited contact information was available for § 87(2)(b) and he has failed to contact the CCRB after attempts were made to reach him (encl. 11A-K).
- Field work was conducted on July 25, 2013. No video footage could be located and only § 87(2)(b) and § 87(2)(b)'s testimonies were obtained that day.

NYPD Statements

Subject Officer: SGT ERIK DEPASQUALE (Encl. 6A-I).

- Sgt. Depasquale was interviewed at the CCRB twice; October 23, 2013 and November 17, 2014. He was solely involved with § 87(2)(b)'s portion of the complaint.
- Sgt. Depasquale provided the following factors that resulted in the entry into § 87(2)(b)'s residence:
 - Sgt. Depasquale did not believe that he needed consent to enter the apartment due to the short amount of time that elapsed since the reported assault (it occurred prior to the officers' arrival), the known whereabouts of § 87(2)(b) and that § 87(2)(b) had no way to escape the apartment.
 - Sgt. Depasquale could not recall where he obtained information pertaining to § 87(2)(b).
 - § 87(2)(b) refused to let the officers into the residence.
 - Sgt. Depasquale heard someone walk past § 87(2)(b) and immediately entered the premises by walking past § 87(2)(b). Sgt. Depasquale located § 87(2)(b) a few feet into the apartment from the doorway.
 - Sgt. Depasquale did not know how § 87(2)(b) came to be on the floor.

Witness Officer: PO MATTHEW DEMAIO (Encl. 6J-X)

- PO Demaio solely witnessed the incident involving § 87(2)(b)

- PO Demaio was the first responder with PO Noel Damico to the dispute and spoke with § 87(2)(b) in the lobby, who indicated that § 87(2)(b) whose description and location she provided had punched her in the face about 5-10 minutes prior to his arrival. § 87(2)(b) reiterated this information to Sgt. Depasquale upon his arrival to the scene. § 87(2)(b) had some bleeding from the face but refused medical attention.
- PO Demaio confirmed that there was no way out of § 87(2)(b) unless it was through the front door because the windows had bars on them.
- PO Demaio observed § 87(2)(b) push her walker into Sgt. Depasquale a few times and lost her balance and fell back to the floor.
- PO Demaio did not corroborate Sgt. Depasquale's statement concerning where they found § 87(2)(b). Instead, he confirmed § 87(2)(b)'s account that § 87(2)(b) was in the back bedroom, that they knocked on that door and he came out voluntarily. No other civilians were in the apartment to PO Demaio's knowledge.

Subject Officer: SGT SEAN DOWNES (Encl. 6Y-7E)

- Sgt. Downes' solely participated in the arrest of § 87(2)(b)
- Sgt. Downes indicated that PO Bryant chased an individual who went up the steps to the 2nd floor, identified by the investigation as § 87(2)(b). As Sgt. Downes followed PO Bryant, he encountered § 87(2)(b) who prevented him from going up the stairs.
- § 87(2)(b) stepped in front of the stairs, pushed Sgt. Downes in the chest and stomach area with both hands. § 87(2)(b) then placed his hands into fists up in front of him as though he was going to fight, and stated, "You don't want none of this. I'm going to fuck you up."
- Sgt. Downes feared for his own safety and punched § 87(2)(b) once in the face (he could not recall specifically where) and § 87(2)(b) fell to the floor on his back. Sgt. Downes turned § 87(2)(b) over and instructed nearby unidentifed officers to handcuff him.
- Sgt. Downes denied that he or any officer used any additional force against § 87(2)(b) during handcuffing him or once he was handcuffed.
- Sgt. Downes never went up to the 2nd floor and in fact waited for PO Bryant to return downstairs. § 87(2)(b) was taken to the hospital immediately.

Additional Officers

- PO Bryant was interviewed at the CCRB. He prepared § 87(2)(b)'s arrest paperwork, that noted that § 87(2)(b) swung at Sgt. Downes prior to threatening him with the use of force resulting in charges of assault in the 2nd degree, OGA, resisting arrest, menacing and disorderly conduct for fighting/violent behavior. PO Bryant was not present during § 87(2)(b)'s arrest nor did he witness § 87(2)(b)'s incident (encl. 7F-X).
- PO Damico was scheduled twice to appear at the CCRB but was not fully notified to do so.
- Names of additional officers, who were injured or made arrests, were listed as witnesses in this complaint. However, there is no direct evidence that they participated in the specific instances investigated in this complaint within the melee. Given the large number of officers that responded to this incident, with most estimates being over 40 officers from the 75 Precinct, PBBN and other commands within the confines of the 75 Precinct, the fact that they were dispered throughout this building complex, the poor descriptions provided by the civilians from the onset of the case and the time constraints of the investigation, no further attempts were made to identify additional officers that interacted with § 87(2)(b) or witnessed his interaction with Sgt. Downes. Furthermore,

no attempts were made to locate officers with no descriptions that cursed at a crowd of unidentified individuals.

Findings and Recommendations

Allegations Not Pleaded

- **Force:** By various accounts including § 87(2)(b) and PO Demaio's testimonies, it is undisputed that there was a slight struggle during the officers' entry into § 87(2)(b)'s residence, whereby she lost her balance as she pushed her walker forward to block the officers at the doorway.
- **Force:** § 87(2)(b) alleged that Sgt. Downes struck him with a flashlight. However, by all civilian accounts and § 87(2)(b)'s statements to medical personnel, Sgt. Downes punched him with no object in his hand. The allegation is therefore pleaded accordingly.
- **Discourtesy:** § 87(2)(b) alleged that an officer told § 87(2)(b) "Where the fuck are you going?" § 87(2)(b) did not make this allegation.

Findings and Recommendations

Explanation of Subject Officer Identification

Sgt. Depasquale was the supervising officer upon the entry into § 87(2)(b)'s residence. As such, Allegation A is pleaded solely to him.

Allegation A- Abuse of Authority: Sgt. Erik Depasquale entered and searched § 87(2)(b) in Brooklyn.

It is undisputed that Sgt. Depasquale entered § 87(2)(b)'s residence without her consent. It is undisputed that § 87(2)(b) was in the residence and that the officers were informed that he had punched a female, identified by the CCRB as § 87(2)(b) about 15 minutes prior to the officers entry. It is undisputed that no weapons were involved and that § 87(2)(b) could not exit the location by any other means than the front door. It is undisputed that the purpose of the entry was to affect § 87(2)(b)'s arrest.

In order to satisfy entry under the emergency doctrine, officers must have the following: (1) reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property; (2) the search must not be motivated by intent to arrest or seize evidence; and (3) there must be reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. People v. Dallas 8 N.Y.3d 890 (2007) (encl. 1A-B). Entry under exigent circumstances includes the following factors: 1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause...to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry. People v. McBride NY Slip Op 3473 (2010) (encl. 1C-I).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation B- Force: Sgt. Sean Downes used physical force against § 87(2)(b)

It is undisputed that Sgt. Downes punched § 87(2)(b) in the face. The sequence of events leading up to the use of force, however, is disputed.

Both § 87(2)(b) and Sgt. Downes provided contradictory statements leading up to the use of force; § 87(2)(b) claiming the punch was unprovoked and Sgt. Downes noting that he was threatened with the use of force by § 87(2)(b) who prevented him from going up the stairs in pursuit of perpetrators.

The majority of the witnesses who are all related and know § 87(2)(b) confirmed the same sequence leading up to the force as § 87(2)(b) but differed on the extent of force used. It is

§ 87(2)(g)

No additional witness officers could be identified.

§ 87(2)(b), § 87(2)(g)

Allegation C- Force: Officers used physical force against § 87(2)(b)

Allegation D- Discourtesy: Officers spoke discourteously to individuals.

No descriptions were provided of the subject officers for these two allegations.

§ 87(2)(b) alleged that he was stomped by an officer and/or officers while he was being handcuffed who he could not see. § 87(2)(b) did not indicate where he was struck on his body and his medical records from § 87(2)(b) Hospital show pain to the knee and ankle but no direct complaint of how he sustained those injuries (see Medical Records folder).

§ 87(2)(b) alleged that nearing the end of the melee, as officers went to leave the complex, unidentified officers told unidentified civilians to, “Shut the fuck up” with no context as to why it was said.

§ 87(2)(b), § 87(2)(g)

Team: Strike Team

Supervisor: _____